LIBRARY
SUPREME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM 1970

No. 647

LARSEN FORD, INC.,

Petitioner,

against

NANCY GASPERINO, as Administratrix of the Estate of Gregory Gasperino, Deceased,

and

FORD MOTOR COMPANY,

Respondents.

BRIEF FOR RESPONDENT, FORD MOTOR COMPANY, IN OPPOSITION TO PETITION OF LARSEN FORD, INC., FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILLIAM L. F. GARDINER,
Counsel for Respondent,
Ford Motor Company,
30 East 42nd Street,
New York, New York 10017.

DANIEL J. COUGHLIN,
Attorney for Respondent,
Ford Motor Company,
110 William Street,
New York, New York 10038.

INDEX

	PAGE
Introductory Statement	1
Statement of the Case	4
Decisions Below	5
Statutes	7
First Point: The petition of Larsen fails to establish any basis for the granting of a writ of certiorari herein	9
Conclusion	16

Statutes and Rules Involved

Section 200 of the Labor Law of the State of New York	6, 11, 13
Section 299 of the Labor Law of the State of New York	2, 3, 5, 6, 9, 11, 12, 13
Section 316 of the Labor Law of the State of New York	5, 9
Section 2, subdivisions (7) and (9) of the Labor Law of the State of New York	9
Rule 23, paragraph (1) of the Rules of the United States Supreme Court	10

Cases Cited

Babbler v. *Turner Construction Corp.*, 308 N. Y. 890, 891-892, 126 N. E. 2d 566 (1955)	14
Gasper v. *Ford Motor Company*, 13 N. Y. 2d 104, 192 N. E. 2d 163 (1963)	12

PAGE

Hess v. *Bernheimer & Schwartz Brewing Co.*, 219 N. Y. 415, 114 N. E. 808 (1916) 11

Namet v. *United States*, 373 U. S. 179, 190, 83 S. Ct. 1151, 10 L. Ed. 2d 278 (Mass., 1963) 10

Olsommer v. *George W. Walker & Sons, Inc.*, 4 A. D. 2d 424 (App. Div., 4th Dept.), aff'd 4 N. Y. 2d 793, 144 N. E. 2d 528 (1958) 12

Perichilli v. *Triborough Bridge & Tunnel Authority*, 15 N. Y. 2d 136, 209 N. E. 2d 802 (1965) 13

Rufo v. *Orlando*, 309 N. Y. 345, 350, 130 N. E. 2d 887 (1955) 14

Semenchuck v. *Fifth Ave. & 37th St. Corp.*, 290 N. Y. 412, 420-421, 49 N. E. 2d 507 (1943) 14

Walters v. *Rao Electrical Equipment Co.*, 289 N. Y. 47, 61, 43 N. E. 2d 810 (1942) 14

Zucchelli v. *City Construction Co.*, 4 N. Y. 2d 52, 149 N. E. 2d 72 (1958) 13

Supreme Court of the United States

OCTOBER TERM 1970

No. 647

LARSEN FORD, INC.,

Petitioner,

against

NANCY GASPERINO, as Administratrix of the Estate of Gregory Gasperino, Deceased,

and

FORD MOTOR COMPANY,

Respondents.

BRIEF FOR RESPONDENT, FORD MOTOR COMPANY, IN OPPOSITION TO PETITION OF LARSEN FORD, INC., FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Introductory Statement

This brief is being submitted by Respondent, Ford Motor Company, the Third-Party Defendant-Appellee below, in opposition to the petition of Larsen Ford, Inc., the Defendant and Third-Party Plaintiff-Appellant below, for a writ of certiorari to the United States Court of Appeals for the Second Circuit herein.

This action, in which Federal jurisdiction is based on diversity of citizenship, was commenced by Respondent, Nancy Gasperino, as Administratrix of the Estate of Gregory Gasperino, Deceased, against Larsen Ford, Inc., in the United States District Court for the Southern District of New York, to recover damages for the wrongful death of said decedent. Gasperino, an employee of Ford Motor Company, died from a coronary thrombosis caused by the inhalation of carbon monoxide fumes while he was working in the basement of the building occupied by Larsen Ford, Inc., a Ford Motor Company dealer, in White Plains, New York. For a substantial monetary consideration, Larsen Ford, Inc., had made the basement of the building available to Ford Motor Company for the work which Gasperino was doing at the time that he met his death.

The complaint in the action charges Larsen Ford, Inc., with negligence in violating Section 299 of the Labor Law of the State of New York, in failing to have the basement of the building adequately ventilated, as mandated by said statute, and, in addition thereto, in violating Section 200 of the Labor Law of the State of New York, which mandates that "All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places".

The case was tried before District Judge David N. Edelstein, without a jury, in the United States District Court for the Southern District of New York. In an opinion and decision reported at 300 F. Supp. 1182, which will be found at pages 37-55 of the petition of Larsen Ford, Inc., herein, the District Court specifically found that Larsen Ford, Inc., violated Section 299, and, in addition thereto, that said defendant also violated Section 200, of the New York Labor Law, and that each of said statutory violations was a proximate cause of the decedent's death and that the de-

cedent himself was not guilty of any contributory negligence. The Court, after meticulously itemizing the various elements of damages sustained by the decedent's Estate, found that "the total of the damages sustained by the beneficiaries of Gregory Gasperino to be $215,899.00, plus interest of $64,770.00", making a total recovery in the sum of $280,669.00. In addition thereto, the District Court dismissed the third-party complaint of Larsen Ford, Inc., against Ford Motor Company, which was based solely on the theory of common-law indemnity, on the ground that the negligence of Larsen Ford, Inc., was "active", which under well settled principles of the common-law of the State of New York bars common law indemnity to an active wrongdoer (Petition, pp. 37-55).

The judgment below was thereafter unanimously affirmed by the United States Court of Appeals in the Second Circuit in an opinion by Senior Circuit Judge Danaher, who was then sitting in the Second Circuit, which is reported at 426 F. 2d 1151, and will be found at pages 30-36 of the petition of Larsen Ford, Inc., for a writ of certiorari herein.

In affirming the judgment below the Court of Appeals sustained all of the findings of District Judge Edelstein, except his finding that Larsen Ford, Inc., violated Section 299 of the New York Labor Law. The Court neither affirmed nor rejected this finding. Instead, it merely stated in a footnote to its opinion that "without hesitancy we could agree (with this finding) had Gasperino been employed by Larsen" and the Court then added that "We have been cited to no decision of the New York Court of Appeals, and our own diligent research has disclosed none, which holds that § 299 applies to a workman employed by other than the owner or lessee of the building in which operations are being conducted" and stated that "We think it unnecessary further to consider Judge Edelstein's appealing treatment of the aspect of the case, for we are sat-

isfied that the judgment must be affirmed upon his alternative conclusion that Section 200 of the Labor Law here applied" (Petition, p. 34).

It will thus be seen that the finding of District Judge Edelstein still stands unreversed, even though the Court of Appeals may have entertained some doubts as to its propriety.

Statement of the Case

On April 6, 1964, the date that he died, Gregory Gasperino, the decedent herein, was an assistant service manager in the employ of Ford Motor Company, hereinafter designated "Ford", the Third-Party Defendant-Appellee below (11a). It is undisputed that on this date Gasperino and five other employees of Ford were working in the basement of the building occupied by Larsen Ford, Inc., hereinafter designated "Larsen", a Ford dealer, in White Plains, New York, making one hundred new Ford Mustang cars, which had recently arrived from the Ford plant in Detroit, Michigan, ready for their first public exhibition. Pursuant to an arrangement previously entered into between Ford and Larsen, under which Larsen was to be paid $20.00 a car by Ford for the use of this space in its White Plains building (296a), Larsen had made the space available to Ford for this purpose, so that the new cars could be kept "under wraps" until they were finally ready to be publicly displayed (20a).

The space in question, which covered an area of some 20,000 square feet in the basement of the Larsen building, had no mechanical ventilation of any kind, although Carl Larsen, the president of Larsen, admittedly was aware of the fact that during the course of work being performed by Gasperino and the other Ford employees working on the premises it would be necessary for them to start the motors in the one hundred Mustang cars and move the cars from one point in the basement to another in order to work

on them (301a). He further admitted that some of the windows in the basement were broken and covered over with plastic sheets (311a), so that no natural ventilation whatever could enter the basement through broken windows.

Shortly before he died the decedent's body was found slumped over in one of the cars on which he had been working. He was sweating excessively and complaining of pains in the chest (115a, 193a, 324a, 336a, 346a-347a). The police were summoned and administered oxygen to him (115a-116a, 191a, 325a) and Gasperino was then taken to the hospital, where he died at 3:50 o'clock that afternoon (325a-326a, Exh. 4, 350a).

The medical proof adduced at the trial establishes, and the District Court so found, that the decedent had inhaled sufficient quantities of carbon monoxide fumes from the exhausts of the cars on which he and the other Ford employees were working to precipitate a coronary thrombosis because of a preexisting atherosclerotic condition from which he was suffering (22a-23a, 54a-55a, 179a-182a).

Decisions Below

As the Court will see when it examines the opinion and decision of the District Court, which will be found at pages 37-55 of the petition of Larsen herein, The District Court specifically found:

(1) That the premises "in which the decedent was working was a workroom in a factory within the meaning of § 299" of the New York Labor Law and that the decedent was a person within the class intended to be protected by said statute and § 316 of the New York Labor Law and that "defendant Larsen Ford violated § 299 by failing to provide mechanical ventilation as required there-

in" (Petition, pp. 42-43).

(2) That Larsen also failed to provide the decedent with a safe place to work, as mandated by § 200 of the New York Labor Law (Petition, pp. 49-50).

(3) That the aforesaid violations of §§ 299 and 200 of the New York Labor Law were proximate causes of the decedent's death (Petition, pp. 40-41).

(4) That "To give credence to Larsen's cross-claim" for common-law indemnity against Ford "this court would have to ignore its crucial findings that Larsen violated §§ 200 and 299 of the Labor Law of New York insofar as it failed to provide the plaintiff [the decedent] with a safe place to work, failed to provide the required and appropriate ventilation facilities, and that Gasperino was in no way negligent" and that "The court therefore finds that Larsen was the active tortfeasor if those words have any meaning at all" (Petition, p. 51).

As heretofore noted, the Court of Appeals for the Second Circuit unanimously affirmed all of the above findings, except the finding that Larsen violated Section 299 of the Labor Law, which the Court neither affirmed nor rejected (Petition, pp. 30-36).

With respect to the amount of the damage award which District Judge Edelstein allowed the decedent's Estate, the Court of Appeals stated (Petition, p. 36):

> "The Defendant-Appellant [Larsen] also claims that the damages awarded were excessive. That an award may be reviewed is beyond peradventure.

Dagtello v. *Long Island Rail Road Co.*, 289 F. 2d 297 (2 Cir. 1961); *Wicks* v. *Henken*, 378 F. 2d 395 (2 Cir. 1967); *Caldecott, Admx.* v. *Long Island Lighting Co.*, 417 F. 2d (2 Cir. 1969) and *Bazydlo* v. *Placid Marcy Co., Inc.* (2 Cir. March 3, 1970). Larsen has advanced its contention earnestly, and we may observe that at first blush, the award seems excessive.

However, taking account of *Gruenthal* v. *Long Island R. R.*, 393 U. S. 156, 159 (1968) we have ourselves examined the record evidence involved in the findings of the trial judge who had carefully detailed the respective elements on which he based the award. Judge Edelstein approached the problem in respects not greatly different from those considered in *United States* v. *Furumizo*, 381 F. 2d 965 (9 Cir. 1967), where the judge, sitting without a jury, spelled out the factors upon which he predicated his computation and the ultimate award. See also *United States* v. *Sommers*, 351 F. 2d 354, 359-360 (10 Cir. 1965); *O'Connor* v. *United States*, 269 F. 2d 578 (2 Cir. 1959). After a fair appraisal of the claims advanced by Larsen measured against the findings, not without support in the record, we are satisfied the award should be permitted to stand."

Statutes

The pertinent statutes are Sections 200, 299 and 316 of the New York Labor Law, and also Sections 2(7) and (9) of the New York Labor Law.

Section 200 of the New York Labor Law, insofar as it is relevant in the case at bar, provides:

"1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons

employed therein or lawfully frequenting such places. * * *"

The relevant portions of Section 299 of the New York Labor Law, reads as follows:

"1. Every work room in a factory shall be provided with proper and sufficient means of ventilation, natural or mechanical or both, as may be necessary, * * *.

"2. All machinery creating dust or impurities in quantities tending to injure the health of employees shall be equipped with proper hoods and pipes connected to an exhaust fan of sufficient capacity and power to remove such dusts or impurities; such fan shall be kept running constantly while such machinery is in use. * * *.

"3. If dust, gases, fumes, vapors, fibers or other impurities are generated or released in the course of the business carried on in any workroom of a factory, in quantities tending to injure the health of the employees, suction devices shall be provided which shall remove such impurities from the workroom, at their point of origin where practicable, by means of proper hoods connected to conduits and exhaust fans. Such fans shall be kept running constantly while the impurities are being generated or released."

Subdivision 1 of Section 316 of the New York Labor Law provides

"1. Except as in this article otherwise provided, the person operating a factory, whether as owner or lessee of the whole or a part of the building in which the same is situated or otherwise, shall be responsible for the observance of the provisions of this article, anything in any lease or agreement to the contrary notwithstanding."

Section 2 of the New York Labor Law, which is entitled "Definitions", provides as follows in subdivisions (7) and (9) thereof:

> "Wherever used in this chapter
>
> * * *
>
> 7. 'Employed' includes permitted or suffered to work.
>
> * * *
>
> 9. 'Factory' includes a mill, workshop or other manufacturing establishment, where one or more persons are employed at manufacturing, including making, altering, repairing, finishing, canning, cleaning or laundering any article or thing in whole or in part, and includes all buildings, sheds, structures or other places used for or in connection therewith [with certain enumerated exceptions which are not relevant in the case at bar] * * *"

In finding that Larsen violated Section 299 of the New York Labor Law the District Court specifically found that "Larsen was a person operating a factory within the meaning of § 316(f)" (Petition, p. 43), and, as heretofore noted, this finding was not overruled by the Court of Appeals, although the Court in a footnote to its opinion expressed some doubt as to its propriety (Petition, p. 34).

FIRST POINT

The petition of Larsen fails to establish any basis for the granting of a writ of certiorari herein.

The petition of Larsen seeks to bring up for review in this Court only the following questions of law:

(1) Whether there is a conflict between the holding of District Judge Edelstein that said petitioner or defendant below also violated Section 200 of the

New York Labor Law, as said statute has been construed by the decisions of the Court of Appeals of the State of New York (Petition, pp. 7-15);

(2) Whether, under the New York decisions, the violation of Section 200 of the New York Labor law constitutes "active" negligence, so as to bar the common-law right of indemnity (Petition, pp. 15-18); and

(3) Whether the damages awarded to the Estate of Gasperion are "so egregiously excessive as to amount to a denial to petitioner of equal protection under the law," and whether said damage award is "in clear conflict with decisions of this Court, of the Courts of Appeals and other federal courts in respect to the rules of damages in death actions" (Petition, pp. 19-23).

It will be observed that petitioner does not seek to review the finding of District Judge Edelstein that said defendant violated Section 200 of the New York Labor Law, which mandated that the basement in which the decedent was working be "provided with proper and sufficient means of ventilation, natural or mechanical or both". Since Rule 23, par. 1(c) of the Supreme Court Rules provides that "only the questions set forth in the petition or fairly comprised therein will be considered by the court" on a writ of certiorari, it is therefore submitted that, if a writ of certiorari is granted herein, it will not bring up for review the crucial question of law raised by this finding of District Judge Edelstein (*Namet v. United States*, 373 U.S. 179, 190, 83 S. Ct. 1151, 10 L. Ed. 2d 278 [Mass., 1963], which, as already noted, was neither affirmed nor rejected by the Court of Appeals.

I.

Even though it be assumed *arguendo* that District Judge Edelstein may possibly have erred in holding that Larsen

also violated Section 200 of the New York Labor Law—although the Court of Appeals held otherwise—in view of his previous holding that Larsen violated Section 299 of the New York Labor law, it is submitted that the finding of liability herein will have to be affirmed on this latter ground. It will thus be seen that the question of whether or not Larsen also violated Section 200 of the New York Labor Law is really a purely academic or moot question insofar as the basic issue of liability herein is concerned.

Actually, however, District Judge Edelstein did not err in holding that, in addition to violating Section 299 of New York Labor Law, Larsen also violated Section 200 of the New York Labor Law, which is commonly known as the "safe place to work" statute. By no stretch of the imagination can it be claimed that a place to work, where, because of the absence of adequate ventilation, the lives of the people working there are placed in jeopardy by an atmosphere that is heavily laden with carbon monoxide fumes is a reasonably safe place to work, within the meaning of Section 200 of the New York Labor Law or any other "safe place to work" statute.

None of the cases cited by Petitioner in support of its contention that the holding of District Judge Edelstein in this regard is "in clear and obvious conflict with the law of New York", as enunciated by the New York Court of Appeals "in a long line of cases" (Petition, pp. 7-18), support this view.

Hess v. *Berheimer & Schwartz Brewing Co.*, 219 N. Y. 415, 114 N. E. 808 (1916), the earliest of the five cases cited by Petitioner, involved an entirely different factual pattern than the one presented in the case at bar. In the *Hess* case here there was no claim that "premises" or "factory" where the plaintiff's intestate was working was unsafe. In that case the plaintiff's intestate was invited onto the premises of the defendant to varnish the interior surfaces of beer vats, where he and his employer

knew or should have known that the safe prosecution of the work required the men doing the same be equipped with blowers which they could take inside the beer vats with them in order to dispell the noxious fumes emanating from the varnish which they were applying to the interior surfaces of the vats. In other words, the danger of asphyxiation in that case was one that was normally incidental to the work that was in progress and did not result from any defect in the premises on which the work was being done, such as an insufficiency of adequate ventilation. It was in this connection that the New York Court of Appeals distinguished between the safety of the premises themselves and the failure of the employer to furnish his employees with proper safeguards for the hazards normally incidental to the hazardous work which they were employed to do.

In the case at bar District Judge Edelstein specifically found that the place where Gasperino was working was a workroom in a "factory", within the meaning of Section 299 of the New York Labor Law, and that Larsen violated its non-delegable statutory duty to provide the room "with proper and sufficient means of ventilation, natural or mechanical or both" (N. Y. Labor Law, § 299, subd. 1), and this finding was not overruled by the Court of Appeals for the Second Circuit. There is no New York case which holds or suggests that where the duty to supply ventilation, natural or mechanical or both, is by statute placed on the owner or person in control of the premises, the latter may shift the non-delegable duty thus imposed upon him by the Legislature to the shoulders of the employer by claiming that the unventilated factory workroom is a part of employer's own "plant on the job," which is what Petitioner is in effect attempting to do in the case at bar.

Olsommer v. *George W. Walker & Sons, Inc.*, 4 A. D. 424 (App. Div., 4th Dept., 1957), aff'd 4 N. Y. 2d 793, 144 N. E. 2d 528 (1958), and *Gasper* v. *Ford Motor Company*, 13 N. Y. 2d 104, 192 N. E. 2d 163 (1963), have no bearing whatever on the question presently before this Court. In

each of these cases the owners of the premises there involved were exonerated from liability on the ground that the accidents there involved were caused, not by any defect in the premises, but solely because at the time of their occurrence the injured employees of the subcontractor were putting a common structural object to a wholly unintended usage.

In *Zucchelli* v. *City Construction Co.*, 4 N. Y. 2d 52, 149 N. E. 2d 72 (1958), and *Perichilli* v. *Triborough Bridge & Tunnel Authority*, 16 N. Y. 2d 136, 209 N. E. 2d 802 (1965), the accidents were likewise caused by defects in the employer's "plant on the job" rather than, as in the case at bar, by the failure of the owner of the premises or the person in control of the same to discharge a non-delegable duty imposed upon him by a statute which was designed to protect workmen on the premises from a specific hazard, such as asphyxiation.

II.

To support its claim that District Judge Edelstein erred in dismissing its Third-Party Complaint against Ford for common-law indemnity (Petition, pp. 15-18), Larsen again completely ignores the crucial finding of the District Court, that said primary defendant violated Section 299 of the New York Labor Law, which certainly constituted "active" negligence on the part of Larsen, wholly apart from the additional violation of Section 200 of the New York Labor Law. As District Judge Edelstein stated in his opinion and decision, Larsen was "the active tortfeasor if those words have any meaning at all" (Petition, p. 51).

If there is any principle of New York law that is now too well settled to admit of doubt it is that one who violates a statute which is designed to protect a specific class of persons against a specific hazard is guilty of negligence *per se* or as a matter of law as respects all persons falling

within the class sought to be protected, who are injured as a result of the violation of the statute, and is therefore guilty of "active" negligence, as that term is commonly understood in the law of indemnity, which bars his right to recover common-law indemnity against another joint tortfeasor.

Rufo v. Orlando, 309 N. Y. 345, 350, 130 N. E. 2d 887 (1955);
Bobbey v. Turner Construction Corp., 308 N. Y. 890, 891-892, 126 N. E. 2d 566 (1955);
Semenchuck v. Fifth Ave. & 37th St., Corp., 290 N. Y. 412, 420-421, 49 N. E. 2d 507 (1943);
Walters v. Rao Electrical Equipment Co., 289 N. Y. 47, 61, 43 N. E. 2d 810 (1942).

In the case at bar Ford was not guilty of any wrongdoing whatever, so it can hardly be claimed that said Third-Party Defendant was a joint tortfeasor with Larsen. Larsen, through Carl Larsen, its president, admittedly knew the purpose for which Ford intended to use the basement of its building and it also knew that during the course of the work being done there by Gasperino and the five other Ford employees with him it would be necessary for them to operate the motors of the one hundred Mustang cars which they were preparing for public display (301a). As the Court of Appeals stated in its opinion, during the course of this work "The engine of each car had to be started in order to jockey each car into position to afford room to carry out the required operations" (Petition, p. 33). Under these circumstances, it is submitted that Ford had every right in the world to expect that the basement which Larsen supplied for this purpose would have sufficient ventilation, natural or mechanical, in it to prevent its employees from being asphyxiated by carbon monoxide fumes while they were working. In this connection it is significant to note that Larsen, fully aware of the danger to which these men were

being exposed, not only prohibited its own employees from working in this inadequately ventilated basement but that it also took great pains to see that its own dealership repair shop upstairs was "protected by necessary hoses and exhaust systems" (Petition, p. 33).

Wholly apart from any technical concepts of what constitutes "active" as distinguished from "passive" negligence, it is submitted that it is unthinkable that anyone who was guilty of the gross negligence with which Larsen was charged in the case at bar should be allowed to shift the monetary loss resulting from the liability thus imposed upon it in this case to the shoulders of the employer of the innocent victim of its gross negligence, whose only sin, if any, was in not knowing that the premises which Larsen made available to it for the specific purpose of making its new Mustang cars ready for public display were not adequately ventilated.

III.

The recovery allowed in this case may, as the Court of Appeals observed in its opinion, "at first blush" appear to be somewhat "excessive", but, as the Court further pointed out, taking into account all of the damage factors considered by District Judge Edelstein, it cannot be said to be so excessive as to justify an appellate reviewing Court in disturbing the same (Opinion, p. 36).

The amount awarded by District Judge Edelstein, sitting as a jury, was $215,899.00, plus mandatory statutory interest in the sum of $64,770.00. This was not a figure which District Judge Edelstein "picked out of the thin air". It was a figure based upon a careful and painstaking analysis and calculation of all of the damage elements which the Court was required to consider (Petition, pp. 53-55).

At the time of his death Gasperino was a married man with a life expectancy of 26.3 years and a work expectancy of 18.8 years (Petition, p. 53). For each of the five years

immediately preceding his death he earned approximately $10,000.00 a year and, had he lived, he could have looked forward to increased earnings in the future (Petition, pp. 53-54). Damage awards in the amount involved herein and even higher amounts are daily being made in comparable wrongful death actions in New York in both the State and Federal District Courts.

It is submitted that there is no substance whatever to petitioner's claim that "The damages awarded in this case are so egregiously excessive as to amount to a denial to petitioner of equal protection under the law, and the award is in clear conflict with decisions of this Court, of the Courts of Appeals and other federal courts in respect to the rules of damages in death actions" (Petition, p. 19).

Although this award may be somewhat high, it is clearly not so excessive as to justify an appellate reviewing Court in reducing the amount of the same.

CONCLUSION

The petition of Larsen Ford, Inc., for a writ of certiorari herein should be denied.

Dated: New York, New York, September 17, 1970.

Respectfully submitted,

WILLIAM L. F. GARDINER,
Counsel for Respondent,
Ford Motor Company,
30 East 42nd Street,
New York, New York 10017.

DANIEL J. COUGHLIN,
Attorney for Respondent,
Ford Motor Company,
110 William Street,
New York, New York 10038.